

Heard Mr. S.K. Ghosh, learned counsel for the appellant/defendant and Mr. B.R. Dey, learned Sr. counsel appearing for the respondent/plaintiff.

This appeal by the defendant is directed against the judgment and decree dated 16.07.2001 passed by the learned Civil Judge (Sr. Division), Hailakandi, in Title Appeal No.30/2000, allowing the appeal preferred by the plaintiff by setting aside the judgment and decree dated 21.08.2000 passed by the learned Civil Judge (Jr. Division) No.2, Hailakandi, in Title Suit No.67/1996, whereby and whereunder the suit of the plaintiff was initially dismissed.

The appeal was admitted for hearing vide order dated 15.12.2001 on the following substantial questions of law:-

- 1) Whether the suit for specific performance of contract is not maintainable for non-compliance of Section 16(1)(c) & 17 of the Specific Relief Act, 1961?
- 2) Whether the Exhibit 1 is hit by Section 22 of Hindu Succession Act, 1956?

Upon hearing the learned counsel for the parties the following substantial question of law has also been formulated today and accordingly the appeal is heard on the said substantial question of law also today itself, as agreed to by the learned counsel for the parties:-

Whether the First Appellate Court has passed the judgment in conformity with the provisions of Order 41 Rule 31 CPC?

The present respondent as plaintiff instituted the said suit for specific performance of the contract contending inter alia that though the defendant initially on 11.04.1996 (Ext.-1) executed a contract for sale, which was subsequently renewed vide another agreement for sale dated 11.09.1996 (Ext.-2) agreed to sale the suit land at Rs.25,000/-, out of which an amount of Rs.21,000/- has been paid and received, the defendant despite offering of the amount of Rs.4,000/- he did not execute the sale deed, a notice dated 08.11.1996 (Ext.-5) was issued to the defendant to execute the sale deed. It is also the pleaded case of the plaintiff that despite receipt of the said notice, the defendant did not execute the sale deed. Hence the plaintiff has instituted the suit for specific performance of the contract.

The defendant on receipt of the summon entered appearance and filed the written statement contending inter alia that an amount of Rs.15,000/- was borrowed by him from the plaintiff in the month of July, 1995 at the rate of 10% interest per month and with a view to secure the payment of the said loan the plaintiff obtained the defendant's signatures in three unwritten stamp papers. According to the defendant, though he has repaid the entire amount including the interest, the said signed unwritten stamp papers have not been returned by the plaintiff and instead those papers have been converted to Bainanama i.e. the agreement for sale. The further pleaded case of the defendant is that the land in question being the ancestral property and there being more than one inheritor and also there being no partition of the land amongst the inheritors, the defendant alone, in the absence of any partition, entered into any contract for sale and hence in any case by virtue of such contract of sale the plaintiff cannot institute the suit for specific performance of the contract.

Based on the pleadings of the parties the Trial Court framed the following issues for determination:-

- (1) Is there any cause of action?
- (2) Is the suit maintainable in its present form?
- (3) Whether the defendant duly executed the Bainanama in favour of the plaintiff?
- (4) To what relief or reliefs the parties are entitled?

The Trial Court, on the basis of the evidence adduced by the parties, dismissed the suit vide judgment and decree dated 05.08.1999, against which the plaintiff preferred Title Appeal No.19/1999, which has been allowed by the First Appellate Court vide judgment and decree dated 15.05.2000 by setting aside the judgment and decree passed by the Trial Court and remanding the suit to the Trial

Court directing to frame the following three issues as additional issues:-

- (i) Whether the defendant took a loan of Rs.15,000/- from the plaintiff with an interest @10% P.M. and the plaintiff obtained signature of the defendant on an unwritten stamped paper and even after the payment of entire loan amount with interest the plaintiff did not return the signed unwritten stamped papers to the defendant and subsequently converted into Bainanama?
- (ii) Whether there was agreement for sale of the suit land for consideration of Rs.25,000/- and the defendant on receipt of Rs.21,000/- as advance executed the Bainanama in question and agreed to Register the sale deed in time and in favour of the plaintiff on receipt of the remaining amount of Rs.4,000/-?
- (iii) Whether the plaintiff was ever ready and willing to perform his part of contract and defendant failed and neglected to perform his part of contract?

On remand the said additional issues were framed by the Trial Court as issues Nos.5, 6 and 7. None of the parties, however, has led further evidence on the aforesaid three additional issues. The Trial Court, based on the evidence already adduced, again dismissed the suit of the plaintiff, without, however, discussing any evidence relating to the additional issue No.5.

The plaintiff, then, preferred Title Appeal No.30/2000, which has been allowed vide judgment and decree dated 16.07.2001 by the learned Civil Judge (Sr. Division), Hailakandi, decreeing the suit of the plaintiff by setting aside the judgment and decree passed by the Trial Court. The Appellate Court has decided the issue No.5 against the defendant even without bothering to discuss any evidence adduced by the parties. Hence the present appeal.

The learned counsel appearing for the appellant has submitted that since the First Appellate Court vide judgment and decree dated 15.05.2000 passed in Title Appeal No.19/1999 directed the Trial Court to decide the three additional issues, being issue Nos.5, 6 and 7, and the Trial Court having discussed the evidence on record, dismissed the suit of the plaintiff, the Appellate Court ought not to have disturbed the judgment and decree passed by the Trial Court and decreed the suit of the plaintiff, even without bothering to discuss any evidence relating to the issue Nos.5, 6 and 7. The learned counsel submits that the First Appellate Court being the final Court on facts, is required to discuss all the evidence on record, more so, when it is a judgment of reversal. The learned counsel, therefore, submits that the judgment passed by the First Appellate Court may be set aside and the appeal may be remanded to the said Court for deciding the same afresh, on the basis of the evidence already adduced by the parties.

The learned Sr. counsel appearing for the respondent/plaintiff, on the other hand, supporting the judgment and decree passed by the Appellate Court, has submitted that though the Trial Court did not discuss any evidence relating to the issue No.5, the Appellate Court in paragraph 11 of the judgment, based on the evidence adduced by the parties, has recorded the finding that the defendant/appellant could not substantiate the plea of taking loan and putting his signatures in the unwritten stamp papers and hence the judgment passed by the Appellate Court needs no interference.

I have considered the submissions advanced by the learned counsel for the parties and also perused the judgments and decrees passed by the Courts below.

As discussed above, pursuant to the judgment and decree dated 15.05.2000 passed by the First Appellate Court in Title Appeal No.19/1999, aforesaid additional issue Nos.5, 6 and 7 were framed by the Trial Court. The Trial Court though did not record any finding relating to the issue No.5, the suit of the plaintiff, however, has been dismissed on the ground that the suit land being the un-partitioned land of a joint family, decree for specific performance of the contract cannot be passed, based on the Exts.-1 and 2 contracts for sale. The said finding has been set aside by the Appellate Court by holding that even in respect of the un-partitioned land, the contract for sale as well as the sale can be executed and such contract of sale as well as the sale shall be to the extent of the share of the defendant over the un-partitioned land. The First Appellate Court in paragraph 11 of the judgment has recorded the finding that the defendant could not prove that the loan of Rs.15,000/- was obtained by him from the plaintiff and to secure the payment of the said loan, his signatures were obtained on three

unwritten stamp papers, without, discussing the deposition of any witnesses examined either by the defendant or by the plaintiff in that respect. The additional issue Nos.6 and 7 have also been decided by the Appellate Court without discussing the entire evidence on record.

The First Appellate Court being the final Court on facts is required to discuss all the evidence on record, more so, when it is a judgment of reversal. In a judgment concurring with the finding of fact recorded by the Trial Court, the Appellate Court need not discuss the evidence on record in details and a general agreement of the finding based on the evidence is sufficient.

In the instant case, since the First Appellate Court has set aside the judgment and decree passed by the Trial Court without discussing the evidence on record in relation to the issue Nos.5, 6 and 7, the judgment and decree passed by the First Appellate Court is set aside. The appeal is remanded to the First Appellate Court i.e. to the Court of the learned Civil Judge, Hailakandi, for deciding Title Appeal No.30/2000 afresh, upon discussing the entire evidence on record in relation to issue Nos.5, 6 and 7. The same shall be done within 2(two) months from the date of appearance of the parties as directed by this Court by this judgment. The parties are directed to appear before the First Appellate Court on 07.10.2013. Registry is directed to send down the records, so as to reach the First Appellate Court before the date fixed for appearance of the parties.

The appeal preferred by the defendant/appellant is allowed to the extent indicated above.

The parties are directed to bear their own cost throughout.